

**PART IV**  
**ENFORCEMENT RESPONSE GUIDE**

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**PART IV**  
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**INTRODUCTION**

The Enforcement Response Guide discusses the variety of noncompliances and the circumstances (and associated degree of noncompliance) under which the Commission will take action. This guide should be used to select the most appropriate response or set of responses to instances of noncompliance. When making determinations on the level of enforcement response, the staff should exercise professional judgment including consideration of such factors as: the severity of the violation in terms of degree of variance from the permit condition or legal requirement; duration of the violation; previous enforcement actions taken against the violator; and, the deterrent effect of the response on a similarly situated regulated entity. It is also important to consider the impact on the environment and the impact on the integrity of the TPDES program and the availability of resources within the Commission, the importance of the violation in comparison with other violations that must be dealt with by limited resources; and considerations of fairness, equity, and national consistency. In any particular case, these factors may lead to the application of an enforcement response different from that suggested in the guide.

A key element in all enforcement responses is the timeliness with which they are initiated and effect compliance. Given the multitude of types of violations, no time frame has been established which applies to all violations for the initiation and completion of a given response. However, within 30 days of the identification of any violation, the appropriate staff will have determined the appropriate response and any action taken will have been documented. If the noncompliance continues beyond what is considered to be a reasonable period of time for corrective measures to be effectuated, the type of formal enforcement action needed will be established. Generally, the appropriate initial response is one that results in the permittee being returned to compliance as expeditiously as possible, and promotes future compliance.

## Levels of Response

There are three possible levels of response to all violations identified in the pervious sections:

- (1) no action at this time;
- (2) informal response; and/or
- (3) formal response.

For every violation identified by VRAC, the Commission will review the violation and determine the appropriate response.

As stated above, for some violations, the response may be no action necessary at this time.

The informal response can be a site inspection by the regional office, a phone call, or a "warning" letter, which will notify the permittee of the occurrence of a violation and include a statement of Commission intent if the violations are not resolved in an expeditious manner. The "warning" letter may also require specific actions to be taken by the permittee within specific time frames. "Warning" letters include letters issued by Central Office staff, and deficiency letters for inspection violations/deficiencies from the Regional Offices.

All Significant Noncompliance (SNC) violations must be responded to in a timely and appropriate manner by the Water Quality Team. The criteria to determine significant noncompliance (SNC) for TPDES violations are as follows:

### **Significant Noncompliance (SNC Criteria)**

#### **1. Effluent Violations of Monthly Average Limits**

##### **a. TRC Violations**

A 40% exceedance of specific pollutant limits listed in Exhibit A or a 20% exceedance of a specific pollutant limit from Exhibit B at a given discharge point for any two or more months during the two consecutive quarter review period is SNC.

b. Chronic Violations

Violation of any monthly effluent limit at a given pipe by any amount for any four or more months during the two consecutive quarter review period is SNC.

2. Effluent Violations of Non-Monthly Average Limits\*

TRC and chronic SNC criteria are the same as for monthly average violations as described in section 1 above.

However, the following caveat also applies:

When a parameter has both a monthly average and a non-monthly average limit, a facility would only be considered in SNC for the non-monthly limits if the monthly average is also violated to some degree (but less than

**\*NOTE: Non-monthly average SNC applies to all maximum and all average (other than monthly average) statistical base codes.**

3. Other Effluent Violations

Any effluent violation that causes or has the potential to cause a water quality or human health problem

4. Non-Effluent Violations

Any unauthorized bypass, unpermitted discharge, or pass through of pollutants which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial uses) is SNC. In the case of POTWs implementing Approved Pretreatment Programs, failure to implement or enforce those programs is SNC.

## 5. Permit Schedule Violations

Any failure to start construction, end construction, or attain final compliance within 90 days of the scheduled date is SNC. Also, all pretreatment schedule milestones missed by 90 days or more are SNC.

## 6. Permit Reporting Violations

Discharge Monitoring Reports, POTW Pretreatment Performance Reports, and the Compliance Schedule Final Report of Progress (i.e., whether final compliance has been attained) that are not submitted at all or are submitted 30 or more days late are SNC.

## 7. Enforcement Orders

### a. Judicial Order

Any violation of a Judicial Order is SNC.

### b. Administrative Order (AO)

Any violations of an effluent limit (or other water quality/health impact) established in an AO is SNC. However, when an AO limit is as stringent as an applicable permit limit, the facility is SNC only if the permit effluent SNC criteria, set out in number 1-3 above, are met.

Any unauthorized bypass, unpermitted discharge or pass-through of pollutants which cause or has the potential to cause a water quality problem or human health problem is SNC.

Any schedule or reporting violations listed above in sections 5 and 6 respectively are SNC.

Any violations of narrative requirements or any other violation of concern to the Director is SNC.

## Exhibit A - SNC Conventional Pollutants (40% exceedance of limit)

Group I Pollutants - TRC = 1.4

*Oxygen Demand*    *Minerals*

Biochemical Oxygen Demand    Calcium

Chemical Oxygen Demand    Chloride

Total Oxygen Demand    Fluoride

Total Organic Carbon    Magnesium

Other    Sodium

Potassium

*Solids*    Sulfur

Total Suspended Solids    Sulfate

(Residues)    Total Alkalinity

Total Dissolved Solids    Total Hardness

(Residues)    Other Minerals

Other

*Metals*

*Nutrients*    Aluminum

Inorganic Phosphorus Compounds    Cobalt

Inorganic Nitrogen Compounds    Iron

Other    Vanadium

*Detergents and Oils*

MBAS

NTA

Oil and Grease

Other detergents or algicides

**Exhibit B - SNC Toxic Pollutants (20% exceedance of limit)**

Group II Pollutants - TRC = 1.2

Metals (all forms)

Other metals not specifically listed under Group I

*Inorganic*

Cyanide

Total Residual Chlorine

*Organic*

All organics are Group II except those specifically listed under Group I.

The enforcement response should reflect the nature and severity of the violation, and, unless there is supportable justification, the response should be a formal enforcement action or a return to compliance by the permittee within one quarter from the date that the SNC violation is first reported on the QNCR. The Water Quality Team, based upon the ESC's decision to pursue

formal enforcement, will initiate formal enforcement action before the violation appears on the second QNCR, within sixty (60) days of receipt of the first QNCR. If the Water Quality Team does not act within this time period, the EPA Region VI Office may initiate a formal Enforcement Action implementing the Federal Override justifications as outlined in the Memorandum of Agreement. In the rare circumstances when formal enforcement action is not taken, the Water Quality Team will have a written record that clearly justifies why an alternative course of action was considered more appropriate.

The formal enforcement response, which will be determined at Screening must be one of the following:

1. Expedited Process and development of a 1660 or Findings Administrative Order (AO), with or without administrative penalties;
2. Executive Director's Preliminary Report and Petition (EDPRP) Process and development of an EL
3. Direct referral to the Office of Attorney General resulting in a Temporary or Permanent Injunction, or an Agreed Final Judgment; or
4. Direct referral by Commission to State Office of Administrative Hearings to ensure violations are adequately addressed.

## Enforcement Response Guidelines:

### A. Sampling, Monitoring, and Reporting

| Noncompliance/Problem   | Circumstances/Severity  | F |
|---|---|---|
| Failure to sample, monitor, or report (routine reports, sludge reports, DMRs) | Isolated or infrequent  | P |
| Failure to sample, monitor, or report (routine reports, sludge reports, DMRs) | Facility does not respond to letter; does not follow verbal or written comments, or commits frequent violations | P |
| Failure to perform biological testing as required                             | Isolated or infrequent  | " |
| Failure to perform biological testing as required                             | Frequent or continued   | A |
| Failure to submit final TRE planning or implementation report as required     | Submitted within 30 days of due date  | " |
| Failure to submit final TRE planning or implementation report as required     | 30 days or more late  | A |



|  |                                      |        |
|--|--------------------------------------|--------|
| Failure to report biological testing results                 | Submitted within 30 days of due date | "      |
| Failure to report biological testing results                 | 30 days or more late                 | "      |
| Failure to file 24-hour report for effluent violations       | Not required                         | "      |
| Failure to file 24-hour report for effluent violations       | Known harm                           | A<br>P |
| Failure to timely submit noncompliance reports               | Isolated or infrequent               | F      |
| Failure to timely submit noncompliance reports               | Known harm                           | A<br>P |
| Minor sampling, monitoring or reporting deficiency           | Isolated or infrequent               | F<br>S |
| Minor sampling, monitoring or reporting deficiency           | Frequent or continued                | A      |
| Major or gross sampling, monitoring, or reporting deficiency | Isolated or infrequent               | "      |
| Major or gross sampling, monitoring, or reporting deficiency | Frequent or continued violations     | A      |
| Reporting false information                                  | Any Instance                         | A<br>P |
| Failure to install monitoring equipment                      | Isolated or continued                | A      |

**B. Permit Compliance Schedules (Construction phases or planning, including required TRE activities)**

| Noncompliance/Problem  | Circumstances/Severity   | F |
|--|--|---|
| Missed Interim Date  | Will not cause late final date or other interim date                   | F |
| Missed Interim Date  | Will result in other missed interim dates; violations with valid cause | W |
| Missed Interim Date  | Will result in other missed interim dates no valid cause               | A |
| Missed Interim Date  | Will result in missed final date with no valid cause                   | A |
| Missed Final Date  | Violation due to <i>force majeure</i>                                  | " |
| Missed Final Date  | 90 days or more outstanding with no valid cause                        | A |
| Failure to make timely corrective control/treatment decisions as part of TRE | Isolation with valid cause   | F |
| Failure to make timely corrective control/treatment decisions as part of TRE | Continuous violation with no valid cause                               | A |
| Failure to undertake TRE control/treatment activities as required            | Isolation infrequent   | F |
| Failure to undertake TRE control/treatment activities as required            | Frequent continued   | A |

### C. Compliance Schedules (Construction phases, TRE activities)

| Noncompliance/Problem | Circumstances/Severity                                      | F           |
|-----------------------|---|-------------|
| Missed deadline       | Contained in permit or previous enforcement action<br>cause | W<br>d<br>c |
| Missed deadline       | Contained in permit or previous enforcement action<br>cause | W           |

### D. Permit Effluent Limits

| Noncompliance/Problem                         | Circumstances/Severity                                  | F      |
|---|---|--------|
| Exceeding Final Limits                        | Outside permittee's control (i.e. - upset bypass)       | F      |
| Exceeding Final Limits                        | Infrequent or isolated minor violations                 | F      |
| Exceeding Final Limits                        | Infrequent or isolated major violations single effluent | "      |
| Exceeding Final Limits                        | Frequent violations of effluent limits or bypass        | A      |
| Exceeding Interim Limits                      | Outside permittee's control (i.e. - upset)              | "      |
| Exceeding Interim Limits                      | No known harm   | A      |
| Exceeding Interim Limits                      | Known harm (i.e. - bypass)                              | A      |
| Failure to meet interim whole effluent limits | Isolated or infrequent with no known harm               | "      |
| Failure to meet interim whole effluent limits | Isolated or infrequent with known harm                  | A      |
| Failure to meet interim whole effluent limits | Continued violation with or without harm                | A      |
| Discharge without a permit                    | Unintentional one time without harm                     | "      |
| Discharge without a permit                    | Intentional one or more times with or without harm      | A<br>p |

### E. Regional Compliance Inspections

| Noncompliance/Problem                                    | Circumstances/Severity           | F      |
|--|----------------------------------|--------|
| Minor violation of sampling or analytical procedures     | Any instance                     | "      |
| Major violation of sampling or analytical procedures     | No evidence of intent            | "      |
| Major violation of any sampling or analytical procedures | Evidence of negligence or intent | A<br>p |

|   |                                      |        |
|---|--------------------------------------|--------|
| Violation of permit conditions other than effluent (multiple) and/or schedule of reporting violations | Nonexistence of negligence or intent | "      |
| Violation of permit conditions other than effluent (multiple) and/or schedule of reporting violations | Evidence of negligence or intent     | A<br>P |

## F. Quality Assurance

| Noncompliance/Problem                       | Circumstances/Severity | F |
|---|------------------------|---|
| Non-submittal of required DMR effluent data | Isolated or infrequent | " |
| Non-submittal of required DMR effluent data | Continuous violation   | A |

## G. Pretreatment: Industrial Users; Commission as the Control Authority

| Noncompliance/Problem   | Circumstances/Severity                                       | F      |
|---|--|--------|
| Non-submittal of baseline monitoring reports and other pretreatment reports | Up to 30 days late   | F      |
| Non-submittal of baseline monitoring reports and other pretreatment reports | Greater than 30 days late (SNC)                              | A      |
| Failure to properly sample and/or analyze                                   | Isolated or infrequent                                       | "      |
| Failure to properly sample and/or analyze                                   | Frequent or continued  | A      |
| Failure to give proper notification of slug loading                         | Any incident   | A      |
| Unauthorized discharge of slug load into collection system                  | Any discharge  | A      |
| Failure to maintain and have records available                              | Isolated or infrequent                                       | "      |
| Failure to maintain or have records available                               | Frequent or continued  | A      |
| Failure to meet compliance schedule requirements                            | Violation due to <i>force majeure</i>                        | "<br>C |
| Failure to meet compliance schedule requirements                            | Missed interim date; will not affect final date              | F      |
| Failure to meet compliance schedule requirements                            | Missed final date; Less than 90 days                         | A      |
| Failure to meet compliance schedule requirements                            | Missed final date by 90 days or more; no good or valid (SNC) | A      |
| Violation of general or specific standard or local limit                    | Minor or infrequent; no known harm                           | F      |
| Violation of general or specific standard or local limit                    | Frequent violations or known harm (SNC)                      | A      |
| Violation of general standards or local limits                              | Causes interference or pass through (SNC)                    | A      |

|   |                             |   |
|---|-----------------------------|---|
| Any noncompliance noted above as <b>SNC</b> | Significantly non-compliant | A |
|---|-----------------------------|---|

## H. Pretreatment: Industrial Users; POTW as Control Authority

When the Commission chooses to take direct enforcement action against an Industrial User (IU) and there is an approved local program, the Commission will notify the POTW of its activities and may issue a NOV letter. The range of appropriate formal enforcement response for these IUs would be the same for IUs where the Commission is the control authority, with the exception that the Commission may join the POTW as a defendant in a judicial action under the Texas Water Code §26.121(c).

| Noncompliance/Problem   | Circumstances/Severity  | F |
|---|---|---|
| Non-submittal of required pretreatment reports  | Late (less than 30 days)  | F |
| Non-submittal of required pretreatment reports  | Continued/recurring non-submittal after notification (30 days) ( <b>SNC</b> ) | A |
| Violation of any requirement of an approved pretreatment program, TPDES permit, or pretreatment regulations | Minor; infrequent   | " |
| Failure to issue/reissue SIU mechanisms as required by approved program                                     | Isolated or corrected   | " |
| Failure to issue/reissue SIU mechanisms as required by approved program                                     | Continued/recurring violation after notification                              | A |
| Failure to sample/inspect SIUs as required by program   | Isolated or infrequent  | " |
| Failure to sample/inspect SIUs as required by program   | Continued/recurring   | A |
| Failure to establish and enforce SIU self-monitoring  | Isolated or infrequent  | " |
| Failure to establish and enforce SIU self-monitoring  | Continued/recurring   | A |
| Failure to appropriately enforce pretreatment standards (categorical standards and local limits)            | Isolated or infrequent  | " |
| Failure to appropriately enforce pretreatment standards (categorical standards and local limits)            | Continued/recurring non-enforcement against one or more                       | A |
| Failure to enforce against instances of pass-through or interference  | Any instance  | A |
| Failure to publish list of significant IUs in significant noncompliance with requirements                   | Late  | " |

|   |   |   |
|---|---|---|
| Failure to publish list of significant IUs in significant noncompliance with requirements | Continued/recurring   | A |
| Failure to comply with compliance schedule  | Milestone date missed by less than 90 days                  | " |
| Failure to comply with compliance schedule  | Milestone date missed by 90 days or more                    | A |
| Failure to maintain and update IU inventory   | Isolated or infrequent                                      | " |
| Failure to maintain and update IU inventory   | Continued/recurring   | A |
| Failure to investigate instances of reported or alleged non-compliance by IUs             | Isolated or infrequent with no known harm                   | " |
| Failure to investigate instances of reported or alleged noncompliance by IUs              | Continued/recurring violation or single violation with harm | A |
| Failure to implement Enforcement Response Plan procedures                                 | Isolated  | " |
| Failure to implement Enforcement Response Plan Procedures                                 | Continued   | " |

## I. Obtaining Program Approval

| Noncompliance/Problem                   | Circumstances/Severity | F |
|---|------------------------|---|
| Failure to submit an approvable program | First occurrence       | A |
| Failure to submit an approvable program | Continued violations   | A |

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